

Minutes of the October 30, 2004 meeting of the
Commission on Governmental Ethics and Election Practices
Held Via Teleconference from the
PUC Building, 242 State Street, Augusta, Maine

All Members participated by telephone. Present: Chair James Donnelly; Hon. Andrew Ketterer; Hon. Jean Ginn Marvin; Hon. A. Mavourcen Thompson ; Hon. Terrance MacTaggart. Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner.

At 3:06 p.m., Chair convened the meeting. The Commission considered the following items:

Agenda Item #1 – Request for Matching Funds by House Republicans

The meeting was held by telephone conference. Mr. Donnelly stated that all rules apply to the electronic conference as they apply in a regular meeting where all parties are present.

The Director explained that the interested parties were represented by Dan Billings for the Republican Party and several Democrats including Stan Gerzofsky. The issue concerned the ruling by the Commission as to what wasn't included in the slate card exception. The Republicans were asking whether their Senate candidate and their three House candidates in Brunswick were entitled to receive matching funds on behalf of an ad that had been running on Brunswick TV cable that promoted the Democratic Senate candidate and the three House candidates including Gowdowski. The Democrats sought guidance on the ad from Commission staff and from previous rulings by the Commission. The Democrats thought that TV ads were an exception and would not trigger matching funds.

Mr. Billings took the floor. He said that he had an informal conversation with Mr. Hain, the former Director of the Ethics Commission, in a previous year about the cable TV ad and was informed that the ad fell under the slate card exception rule. The same ad is running on cable TV this year and he assumed the same ruling would apply; however in view of the ruling by the Commission on October 28th, he had taken a different view of the ad. Mr. Billings said the ad was 30 seconds in duration and most of the ad was a generic view of the Brunswick area with a voice over describing the issues the Democrats believe they stand for and were promoting in their campaign. He said the beginning of the ad showed a video from years ago with three of the candidates and Tom Allen and the end of the ad featured still photos of the four candidates in Brunswick listing their names. Mr. Billings stated that, in his opinion, a TV ad does not fall under one of the slate card exceptions. He felt the TV ad was a visual presentation and that TV ads or radio ads do not fall under the exception. The rulings of October 28th, the rulings of the former

Director and Commissioners as well as the plain language of the Statutes relating to other printed matter, was the reason Mr. Billings was bringing this issue before the Commission. Mr. Billings said he certainly did not believe the Democratic Town Committee in Brunswick was trying to do anything inappropriate or to skirt the law, and that he believed they were acting in good faith. By making this request, he was not criticizing the actions of the Democratic Party in Brunswick, and that it is his opinion that the Republican Party was also acting appropriately. Mr. Billings also stated that the letter of the law should prevail and he felt the TV ad did not fall under the exception according to the law.

Mr. MacTaggart asked that the TV ad or at least the voice over be presented. Commission Director said the ad was not available and a copy could not be secured before Monday. Mr. MacTaggart wanted to see the ad as he felt it would be helpful.

Mr. McGrath, representing the House Democrats, took the floor. He said the ad had a listing at the end, along with photos. The ad also recognized equal time for the Republicans as required. Mr. McGrath referred to the 2002 ruling concerning equal time on radio and TV. He said the graphic could be used as a newspaper ad and the TV ad was just a visual. Mr. McGrath also stated his opinion that the Commission should see the ad before making a decision. He also asked how an email graphic should be considered. Ms. Ginn Marvin asked Mr. McGrath if he knew how many times the ad was aired. Mr. McGrath did not have that information. Mr. Donnelly asked Mr. McGrath to supply the information if the Commission deemed it necessary. Mr. McGrath agreed to supply the ad.

Representative Gerzofsky said he had seen the ad and it was the same ad that ran in previous years with the exception of a few changes. He said the dates were changed and one candidate had been added. He felt it is a "get out the vote" ad. Mr. Ketterer asked if any candidate was more prominently displayed or if all candidates were treated equally in the ad. Representative Gerzofsky said all candidates were given equal treatment. Mr. Ketterer asked what was said in the ad. Representative Gerzofsky said the ad lists basic issues like health care and jobs. Mr. Ketterer asked if all candidates were on the screen at the same time. Representative Gerzofsky said they were on the screen at the same time, that each picture is the same size, and that the names and districts were listed for each picture.

Mr. Ketterer commented that no one candidate was prominently displayed and he felt that was a major difference between this request and the Thursday request. Thursday's ruling had one candidate prominently displayed and the other names appeared in a much smaller format. He also commented that without seeing the ad, it was difficult to make a complete judgment. Mr. MacTaggart commented he was not comfortable with not seeing the ad. He then listed the three points which made him in favor to trigger matching funds. Those points were that it was a parallel with the Thursday ruling, that TV ads were not specifically included in the exclusion and that because the language was a grey area, the playing field should stay level. Mr. Donnelly asked Ms. Gardner's comments during the last meeting concerning the change in the law. Ms. Gardiner replied

that it did not seem to be quite the same type of issue as was heard on October 28th. She said the issue seemed to be a straight forward, and that it was not a vote for one person, but a vote on issues. Without seeing the ad in question, however, she couldn't be more specific. Mrs. Thompson asked Phyllis or Jonathan to address in more detail the fact that the ad was a video rather than printed matter. Commission Director referred to the October 24, 2002 meeting, which considered the radio ads. The Commission denied the funds based on the fact that the ads were considered, at that time, slate card exceptions. At that meeting, it was felt that the Legislators meant communication in general and not just printed matter. Phyllis Gardiner said that if you have text, whether printed on a piece of paper, or read over the radio, or shown on TV, it is the text and not the way of communication that is important. The Director commented that the Commission should ask, after the election, the Legislators to address the law concerning expenditures and exceptions to the slate card. He also pointed out that Representative Gerzofsky was actually going on a past decision. Ms. Thompson asked if Mr. Billings had seen the ad. Mr. Billings said that the description was basically correct. Mr. MacTaggart asked Mr. Donnelly to read the minutes from October 24, 2002, which Mr. Donnelly did.

Mr. Ketterer motioned, Ms. Ginn Marvin seconded, and the Commission voted unanimously to deny the request for matching funds (5-0)

Agenda Item #2 – Request for Matching Funds by Rep. Benjamin Dudley

The Director said the Commission was contacted by Rep. Dudley concerning a piece of literature from the Cumberland County Green Independent Party Committee. Rep. Dudley was requesting that, based upon the Thursday ruling, the piece in question does not meet the slate card exception because it predominantly advocated the election of Pamela Cragin and did not promote the other candidates listed equally. The Director said the costs of the piece was not known and therefore it could not be determined if the amount involved met the \$100 threshold. He also expressed the concern of the \$1500 amount requirement and the report that had to be turned in should that amount had been reached. He indicated that, as of the time of the meeting, the required report had not been filed.

Mr. Ketterer pointed out that they could have spent the money on this ad after October 27th, which would mean the report wouldn't be due yet. Ms. Thompson said she was confused about the relevance of the \$1500 comment. Mr. Donnelly replied that the Commission usually has the report and at this point the Commission does not know the amount raised and/or spent by the Party. Mr. Ketterer asked about the relevance of the report. Mr. Donnelly replied that it was relevant when the report was in hand as a reference point for the Director, and that there was concern because The Director didn't have the report for reference.

Representative Dudley took the floor. He said one side of the card was entirely of Pamela Cragin and not the other candidates, while the other side only mentioned the other candidates. Mr. Ketterer asked if the other candidates were Green candidates.

Dan Delane took the floor. He said he thought this mailing was clearer than the mailing the Commission considered at the Thursday meeting. Mr. Delane responded to Mr. Ketterer's question concerning the affiliation of the other candidates on the mailing by indicating that two of the candidates were Green Party candidates. Mr. Ketterer asked if there would be any difference if other candidates from other parties were listed in the mailing. Mr. Donnelly replied that the names listed do not have to be the same party affiliation.

Mr. David Clopp took the floor. He said it was an expressed advocacy piece and that he encouraged that matching funds be triggered.

Toby McGrath took the floor. He pointed out the piece was a bio of one specific candidate. He also said it was a very expensive piece.

Mr. Ketterer moved and Mr. MacTaggart seconded a motion that funds be awarded to both the opposing Republican and the Democrat candidates. The Commission voted 3 to 2, and the motion passed. (Mr. MacTaggart, Ms. Thompson and Mr. Ketterer voted for the motion, Mr. Donnelly and Ms. Ginn Marvin voted against.). The Director indicated he was trying to track down the Green party to get the amount of the mailing in order to provide the matching funds. Ms. Ginn Marvin left the meeting.

Agenda Item #3 – Request for Matching Funds by Rep. Joe Perry

The Director stated that the Commission received a request from Representative. Joe Perry for matching funds based on a four-page insert in the Bangor Daily News. The insert was paid for, in the amount of \$9,348.35, by the Leadership for Maine's Future PAC. Representative Perry argued that because the insert was paid for by an independent entity, the "slate card" exception did not apply. The Director said the money was paid to the Penobscot County Republican Party and they had acted as the middle man for the Leadership for Maine's Future PAC. He also said the language of the law specifically said that for expenditures paid by a party, state district or county committee, not by an independent entity. The Director said the question before the Commission was does the slate card exemption cover this at all, and if so, is it a printed listing of three or more candidates. The Director said that Representative Joseph Perry was here to speak on the insert and Representative Josh Tardy would be speaking on behalf of the PAC.

Ms. Thompson asked for an explanation between the terms "paid for" and "authorized by." Ms. Gardner replied that it would be best to hear what PAC has to say and to hear the facts of the issue. Mr. Ketterer asked if it was in the October 30th issue of the Bangor Daily News in question. The Director replied that he believed it was in the October 29th issue. Mr. Donnelly indicated that he felt it was in the October 30th issue.

Representative Joseph Perry took the floor. He said that at this point matching funds were not that important to him, but he wanted the issue addressed. Representative

Perry said this was the third piece that has appeared in a row. Representative Perry felt this newspaper ad was being paid for by an independent party. Representative Perry also told the Commission that if he was awarded the money, he would be unable to use it at this late date. Regardless, he wanted the issue to be addressed and that this was the reason he was bringing it before the Commission.

Representative John Tardy, speaking on behalf of the Leadership for Maine's Future PAC, took the floor. He said that the PAC made an expenditure to the Penobscot County Republican Party. Mr. Tardy said the disclosure was an error on their part. Mr. Donnelly asked who actually made the payment. Mr. Tardy said the Republican Party had made the payment and that it was a mistake on the disclaimer.

Dan Billings took the floor. He said he hadn't seen the piece and said he was involved in a similar case in previous years. If the question concerned equal representation of all candidates listed in the ad, he said that it was equal and not an issue. Mr. Billings said if the question concerned the disclaimer, then it falls outside the "slate card" rules and matching funds should be triggered.

Ben Grant took the floor. He said he agreed with Mr. Billings and the issue was about who had actually paid for the ad.

The Director stated that a report from the Penobscot County Republican Party showed the receipt of funds from the PAC and the expenditure being made by the Republican Party to the media.

Ms. Thompson asked if there was any history of similar situations. Ms. Gardiner said she could not recall any history. Ms. Thompson asked if it was permissible for an independent source to raise funds and then have those funds paid through the Party rather than the physical payment being made directly by the independent source. Ms. Gardiner said she was not clear if this was actually the case.

The Director said the money started from the Leadership for Maine's Future PAC and that it was spent by the Leadership PAC and given to the Penobscot County Committee. The Party Committee reported that it had received the money from the Leadership PAC. The County Party reported paying the amount to the media.

Mr. Donnelly said he thought the question is in relationship to whom the money is attributed, rather than who paid the money. He then asked the Director what the Commission's stand should be if this was an attribution error. Ms. Gardiner said they could find out if the attribution was accurate and if not it is was a violation of Section 1014.

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously not to award matching funds.(4-0)

Other Items

Commission Director stated that Representative Dudley had brought to the Commission's attention at noon on October 30th that his opponent, Pamela Cragin, was using signs which had been previously used. Representative Dudley was asking if this constituted a violation of the Maine Clean Election Act. The Director indicated that the main issue was did these signs constitute an in-kind contribution of materials and if so was it a contribution to Ms. Cragin's campaign and should she be found in violation. The Director advised the Commission that Mr. Ben Chipman would be available by phone to represent Mr. Cragin if the Commission wanted to pursue the issue. However, neither party was available at the time this item was considered, and the item was tabled.

There being no further business, the Commission adjourned.

Respectfully submitted,

Jonathan Wayne
Executive Director